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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 1142 OF 1997**

Nashik Workers Union, Nashik. ... Petitioner

V/s

1. Mahindra & Mahindra Ltd. Nashik
2. The Contrat Labour Board.
3. The State of Maharashtra ... Respondents

Mr. Anand Grover with Ms. Monish Virkar for Mr. Colin Gonsalves for the petitioner.

Mr. C.U.Singh with Mr. Niranjan Mogre i/by M/s. Haresh Mehta & Co. for the respondent No.1.

Mr. S.K.Chinchalikar, A.G.P. for respondent Nos.2 and 3.

**CORAM: SMT. NISHITA MHATRE, J.**

**DATED: 12TH SEPT., 2007.**

**ORAL JUDGMENT**:

1. This petition has been filed against the order of the Industrial Court in Revision Application (ULP) No. 128 of 1995. This revision application was filed against the order of the Labour Court. The facts involved in the present petition are as follows:-

. The petitioner contends that the respondent Company employed some workmen through contractors. The

petitioner apprehended that the services of the workmen would be terminated as a result of the change of contractors sought to be introduced by the respondent No.1 Company. The petitioner, therefore, filed the complaint under Item 1(a), (b), (d) & (f) of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971. The contention raised in the complaint, which was registered as Complaint (ULP) No. 118 of 1993 was that the workers whose names figured in Annexure-A to the complaint were employees of the respondent No.1 Company and that the respondent No.1 had "inducted" contractors as a camouflage. It was pleaded that this arrangement was effected only in order to deprive the workmen the benefits of permanent employees and to camouflage the relationship of employer and employee between the respondent No.1 Company and the workers. It was also contended in the complaint that the contractors were middlemen and that the contracts were sham and bogus. According to the petitioner, there was an adequate work of a permanent nature available with the respondent No.1 Company to engage permanent workmen, despite which the respondent No.1 Company had engaged contract labourers. It was also pleaded that the supervision and control over the workmen was that of the officers of the respondent No.1 Company and the workmen were engaged for work which was part and parcel of the activities of the

respondent No.1 Company. It was also contended that the workmen had worked continuously for a long period of time. It was further pleaded that during the interregnum between two contractors, the workmen were directly paid by the respondent Company. The petitioner had pleaded that identity cards had been issued to the workmen by the respondent No.1 Company. It was also pleaded that Annexure-A be treated as part and parcel of the complaint.

3. In their reply, the respondent No.1 Company has denied that the persons whose names figured in Annexure-A, were their workmen. It was contended that they were employed by contractors who were in turn engaged by the respondent No.1 Company. According to the respondent Company, there was no relationship of employer and employee between itself and the workmen and, therefore, the complaint was not maintainable under the M.R.T.U. & P.U.L.P. Act. As regards the contention of the petitioners that the workmen had been issued identity cards by the respondent No.1 Company, it was pleaded that these identity cards had been furnished since the contractor had failed to do so. It was also pleaded that the contributions towards Employees' State Insurance Scheme and Provident Fund Scheme were made by the respondent No.1 as in law, the principal employer

was responsible for making these payments if the contractor had failed to discharge his liability in respect of these payments.

4. The Labour Court, on the basis of the evidence led before it, has concluded that the employer i.e. the respondent Company had committed an unfair labour practice under Item 1(b), (d) and (f) of Schedule IV of the M.R.T.U. & P.U.L.P. Act. It was held that there was a sham and bogus arrangement between the respondent Company and the contractor and that, in fact, there was an employer and employee relationship between the respondent No.1 Company and the workmen. The Labour Court, therefore, directed the respondent Company to reinstate the workmen with continuity of service and full back wages.

5. Being aggrieved by this decision, a revision application was preferred by the respondent No.1 Company before the Industrial Court. The Industrial Court, by a voluminous judgment running into 150 pages, has concluded, in exercise of its jurisdiction under Section 44 of the M.R.T.U. & P.U.L.P. Act, that the complaint was not maintainable since there was no employer and employee relationship between the workmen and the respondent No.1 Company. The Industrial Court also came

to the conclusion that the contracts between the respondent No.1 Company and the contractors were neither sham nor bogus.

6. The petitioner has assailed this judgment of the Industrial Court by filing the present writ petition.

7. Mr. Grover, appearing for the petitioner candidly submits that the judgments in **Cipla Ltd. v/s Maharashtra General Kamgar Union & ors., reported in A.I.R. 2001 Sc 1165 and Vividh Kamgar Sabha v/s Kalyani Steels Ltd., reported in 2001 I C.L.R. 532 (SC) and Sarva Shramik Sangh v/s Indian Smelting & Refining Co. Ltd., reported in A.I.R. 2004 SC 269,** the petitioner would first have to satisfy the Court that the Labour Court had jurisdiction to entertain the complaint inasmuch as that there was an employer and employee relationship which was indisputable and undisputed. He submits that, in the event, the petitioner is able to overcome this hurdle, then on merits the Industrial Court has erred in reversing the judgment of the Labour Court by concluding that the contract between the respondent No.1 and the contractors were not sham or bogus. In order to establish that the Labour Court had jurisdiction to entertain the complaint, Mr. Grover drew my attention to Annexure-A to the complaint which

discloses that the workmen had commenced working with the respondent No.1 Company over a period of time from 1980 to 1993. He submits that this list is a part and parcel of the complaint which has not been denied specifically in the written statement filed by the respondent No.1 Company. He urges that in view of the list which discloses the dates of joining, the petitioners are entitled to maintain the complaint. He further submits that the expression "induction of contractors" used in the complaint indicates that the workers were in employment even prior to the "induction" of the contractors. He submits that, that is the only interpretation which could be placed on this expression. He then points out that the registration of the respondent No.1 Company under the Contract Labour and Abolition Act was executed some time in 1979 for Plant No.1 and in 1974 for Plant No.2 of the respondent No.1 Company, which is seen from the written statement filed by the respondent Company. He urges that the contracts were registered only from 1988 onwards and, therefore, it must be held that there was a relationship of employer and employee between the respondent Company and the workmen.

9. The judgment of the Supreme Court in the case of **Cipla Ltd. (supra),** stipulates that if at any time the

employee is considered indisputably an employee of the establishment and the employer subsequently disputes this position, it can be tried as an incidental question arising under Section 32 of the M.R.T.U. & P.U.L.P. Act. The attempt of the learned counsel for the petitioner is to try and establish that the relationship of employer and employee was indisputable and that it had been subsequently disputed by the induction of a contractor.

10. In my view, this submission of the learned counsel cannot be accepted. I have perused the complaint in great detail and find that there is an averment contained in the complaint is that the contract between the respondent No.1 Company and its middlemen was sham and bogus. The interpretation sought to be placed by the learned counsel for the petitioners on the expression "induction of contract" to the effect that this would indicate that the workmen were working with the respondent No.1 Company earlier, cannot be accepted. The expression "Induction of contractors" would not necessarily establish that the workmen were working with the Company prior to the contracts being entered into between the contractors and the respondent No.1 Company. In fact, that is not what is pleaded in the complaint. The complaint proceeds on the footing that their

contracts were sham and bogus and that for periods intervening between the employment of two different contractors the workmen worked as the employees of the respondent No.1 Company as they were paid by the respondent No.1 Company. Therefore, the submission of the learned counsel is without merit. Apart from this, it is sought to be argued that the fact that the list which is annexed to the complaint and which is a part and parcel of the complaint bears the names of the workmen and their dates of joining, indicates that the workmen were in employment of the respondent No.1 Company even prior to the contractors being engaged. This submission is not borne out by Annexure-A to the complaint. That document shows the names of the contractors under whom the workmen were working. Under these circumstances, it is impossible to accept the submission of the learned counsel that there was an indisputable or undisputed relationship of employer and employee between respondent No.1 Company and the workman only on the basis of Annexure-A to the complaint.

11. In my view, therefore, the submissions of the learned counsel for the petitioner cannot be accepted. The petitioner has been unable to establish or demonstrate by the pleadings and material on record, not being the evidence, that there was an employer and

employee relationship between the respondent company and the workmen.

12. In this view of the matter, the petition is dismissed. Rule discharge. No costs.

13. The learned counsel for the respondent No.1 Company seeks liberty to withdraw the amounts which have been deposited by the respondent No.1 Company before the Labour Court from time to time. This amount may be withdrawn by the respondent No.1 Company after a period of four weeks from today.

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